IN THE

Supreme Court of the United States

October Term, 1942

MAR 2 1943

CHARLES ELMORE CROPLEY
CLERK

779

NICHOLAS J. CURTIS,

Petitioner,

vs.

UTAH FUEL COMPANY, a corporation, its officers and agents, including DR. E. R. MURPHY; DR. ROBERT K. ALLISON (deceased); DR. FRANCIS S. BASCOM (deceased); H. COLLIN MINTON, JR., and FERDINAND ERICKSEN, its attorneys; NICHOLAS J. PAPPAS, Paterson, N. J.; GEORGE N. PAPPAS, Paterson, N. J.; SOTIRIOS NICHOLAIDIS, Paterson, N. J. (not served); HARRY SUSSMAN, Paterson, N. J.; WILLIAM V. ROSENKRANS, Paterson, N. J.; LOUIS BROWNLOW, Washington, D. C. (not served); CHARLES W. KUTZ, Washington, D. C. (in default); DR. PERCY HINKLING, Washington, D. C. (deceased); WILLIAM H. FAY, Washington, D. C. (cannot be found); WILLIAM J. HAZEN (MELVIN J. HAZEN), Washington, D. C. (cannot be found); WILLIAM M. FOLLAND, Salt Lake City, Utah (in default; no motion or other pleading); DR. LESLIE J. FAUL, Salt Lake City, Utah (no appearance; in default); DR. SAMUEL WOLF, Salt Lake City, Utah (deceased); SIMON BAMBERGER, Salt Lake City, Utah (deceased; BAMBERGER COAL CO. established); DR. FREDERICK [illegible], Springville, Utah (appear by Special Appearance name only); DR. FRED W. TAYLOR, Provo, Utah (no appearance; in default); DR. [illegible] GALLACHER, Salt Lake City, Utah (appearance by Special Appearance name only); DR. D. E. SMITH, Salt Lake City, Utah (appearance by Special Appearance name only); CAROL C. JOHNSON, New York (Motion to Retain Jurisdiction); JOSEPH RIRIE, Salt Lake City, Utah (deceased); D. O. LARSON, Salt Lake City, Utah (no appearance; in default); CHARLES E. MAYER, Salt Lake City, Utah (no appearance, name only on Special Appearance list, no Motion or Affidavit); MARK TUTTLE, Salt Lake City, Utah (no appearance, in default).

Respondents.

PETITION FOR WRIT OF CERTIORARI

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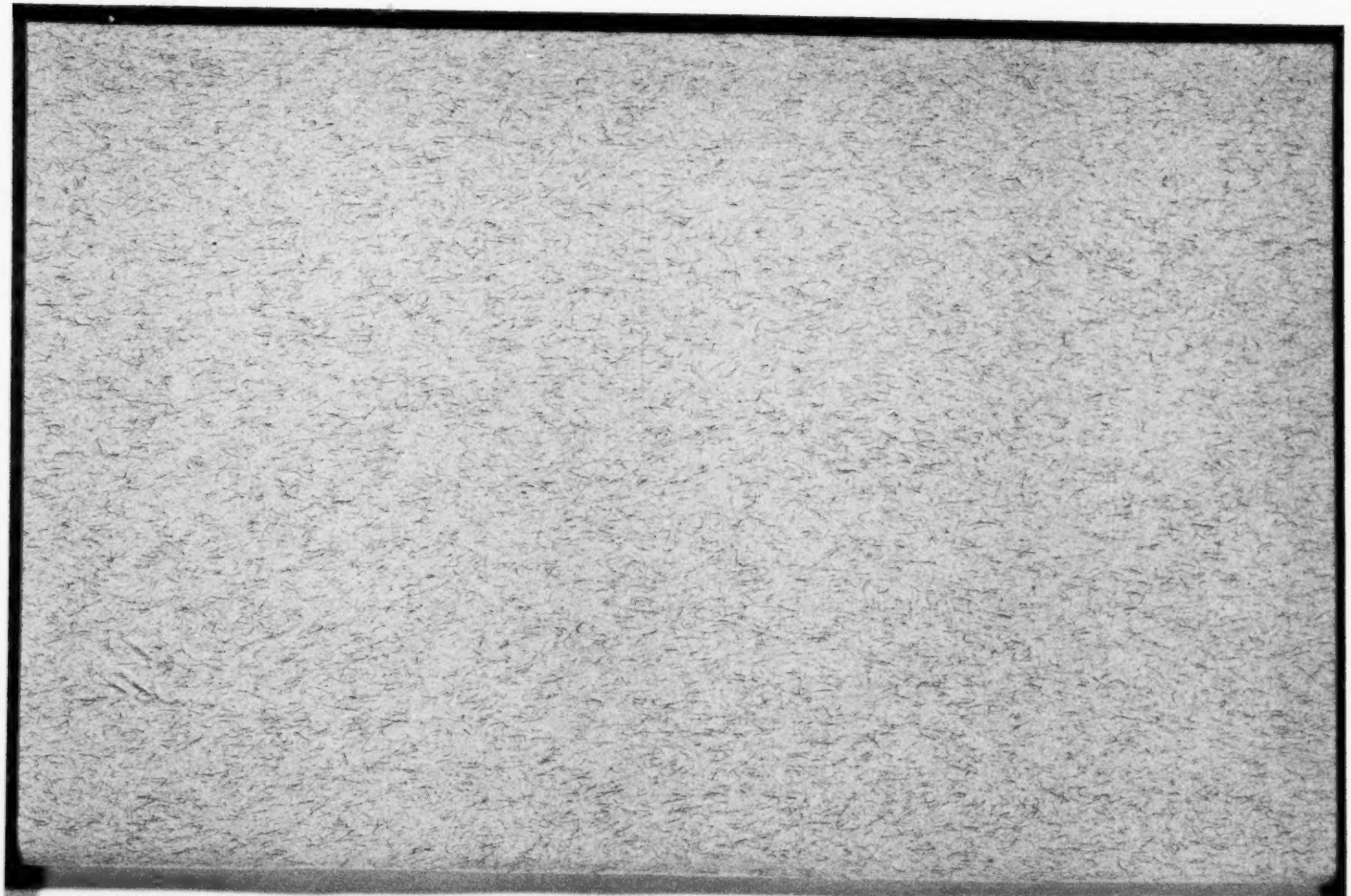
CAROL C. JOHNSON,
Defendant, Absconding.

F. Hunsinger Co., Appellate Printers, Camden, N. J.



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IN THE

SUPREME COURT OF THE UNITED STATES.

WASHINGTON, D. C.

No. October Term, 1943.

NICHOLAS J. CURTIS,

Petitioner,

against

UTAH FUEL COMPANY, a Corporation, et als.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF THE UNITED STATES WITHIN AND FOR THE THIRD CIRCUIT, PHILADELPHIA, PA.

NICHOLAS J. CURTIS, LL.B.,
Petitioner Appearing in Person,
Post Office Box 972, Trenton, New Jersey.

Articles of the United States Constitution and Statutes Involved. Jurisdiction founded on the existence of several Federal Questions and amount in controversy. The action

arises under the Constitution of the United States, Article I, Section 9, Subdivision 2; Article III, Section 2; the Amendments to the Constitution of the United States, Sections IV, V, VI, VIII and XIV, and U. S. C. A. Title 8, Chapter 3, Sections 41, 43, 47, (1), (2), (3); Title 15, Sections 1, 2, 3, 4, 5, 15, and 24; Title 28, Sections 103, 725, and 729; Section 41, (1) c, (8), (12), (14), (17); Chapter 2, Section 41 (2) Crimes and Offenses; Chapter 4, Section 103, Offenses begun in one district and completed in another; The Treaties of the United States with the Kingdom of Greece. (Rule 84. Forms. Federal Rules of Civil Procedure Simplicity and Brevity of Statements which the rules contemplate. Form 2.—Allegation of Jurisdiction, pp. 106-107 of the Rules.) (See page 3 of the Complaint.) Also under the Constitution and Statutes of the State of Utah. See the Appendix of the Complaint, pp. 91-92.

To the Honorable the Chief Justice and Associated Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

YOUR Petitioner, Nicholas J. Curtis, respectfully shows unto this Honorable Court as follows:

The plaintiff in this suit, Nicholas J. Curtis, appearing in person, filed this his suit by the filing of his Complaint with the Clerk of the United States District Court within and for the District of New Jersey, on January 12, 1940. Plaintiff also made a deposit in the sum of $25.00 for Clerk's Fees and Costs. On March 25, 1940, the First Supplemental Complaint was filed and Summons issued (26 Copies). April 16, 1940, Summons returned served on Utah Fuel Company by serving its attorney on April 3rd, on Utah Fuel Company by serving Vice President, on Mrs. Helen N. Pappas and Nicholas Pappas and William V. Rosenkrans

personally April 6th, Harry Sussman, out of District. Sotirios Nicholaidis, "deceased" filed. April 17, 1940, Notice of Motion to Strike Complaint and Quash Summons re Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans, Filed. (See the said Motion on pp. 45-46-47 of the printed part of the Record.) April 22, 1940, Summons Returned served Dr. R. E. Murphy on April 8th, on W. D. Sutton, Mark Tuttal, Wm. H. Folland by serving wife; on Dr. D. E. Smith and D. O. Larson on April 9th, on April 11th Dr. Frederick Dunn, Dr. Samuel Wolf, Joseph Ririe and Simon Bamberger, deceased, Dr. J. C. Paul and Dr. Arthur Taylor, unknown, filed. April 22, 1940, Summons returned served on Chas. W. Kutz, personally April 6th, Louis Brownlow "not found", and Dr. Hickling, deceased, Wm. H. Fay and William J. Hazen not found, filed. April 22, 1940, Summons returned served on Carol C. Johnson, April 8th, filed. April 22, 1940. Hearing on Motion to Strike Complaint and quash service of summons as to Nicholas J. Pappas, Helen N. Pappas, Harry Sussman and William V. Rosenkrans. Plaintiff submitted his case on his Opposing Affidavit. (See the said Affidavit on pp. 47-63. Nine supporting affidavits, pp. 63-70 of the printed parts of the Record.) Decision reserved (Walker). April 23, 1940. Opposing Affidavit Opposing the Motion to Vacate and Set aside the service of Summons filed by Carol C. Johnson, filed and served personally. April 24, 1940. Special appearance and Notice re Utah Fuel Company and H. Collin Minton, Jr., filed. Notice of Motion for Order Striking Complaint as to Utah Fuel Company and H. Collin Minton, Jr., filed. April 26, 1940. Opposing Affidavit Directed against the Motion to Strike the Complaint filed. (See it. pp. 8-33 of the Printed Parts of the Record. May 6, 1940. Hearing on Motion for Order vacating and setting aside service of summons and complaint as to Carol C.

Johnson. No appearance for the motion. Plaintiff submitted his part of the argument on his said Opposing Affidavit. Decision Reserved (Walker). May 13, 1940. Motion and Application to Take Depositions of Parties out of State filed. May 13, 1940. Notice of Motion for Order staying proceedings filed. May 13, 1940. Hearing on motion to take testimony out of the United States. Decision Reserved (Walker) May 13, 1940. Amendment to Original Complaint filed, and Summons on Amendment issued. May 20, 1940. Notice of Motion to substitute the Bamberger Coal Company in place and stead of Simon Bamberger, deceased, filed. June 3, 1940. Summons returned served on Dr. Leslie J. Paul, personally, and on Bamberger Coal Company by serving Wm. D. Eldridge, Vice President, on May 22nd, on Dr. Frederick Taylor, personally, May 28th, filed. June 10, 1940. Hearing on motion to substitute the Bamberger Coal Company. Motion called and no Opposition. No Appearance for the defendant. Decision reserved. (Walker). July 1, 1940. Motion and Notice of Motion for leave to amend prayer for relief filed. July 1, 1940. Motion and Notice of Motion for default judgment filed. July 8, 1940. July 8, 1940. Hearing on motion for leave to amend prayer for relief. Hearing on motion for entry of Default Judgment. Decision reserved.

B.

STATEMENT OF THE QUESTIONS INVOLVED.

(a). See those which are set out on pp. 1 to 7 of the Brief to the C. C. A. Third Circuit which is annexed hereto and made a part hereof.

(b). Your petitioner, without any fault of his own, has been singled out and severely dealt with by several State

Courts as well as several United States Courts, and, with the exception of three or four instances, has been denied civil rights ever since the year 1913, or thereabout. See the Exhibits certified by the proper authorities and sent up by the Clerk of the Circuit Court of Appeals Third Circuit. See Beals vs. Curtis, Box Elder County, Utah, certified copy of the Proceedings had in the case on file in the Clerk's Office of the United States District Court District of New Jersey; Curtis vs. Zavitsanos, District Court of Salt Lake County, Utah. By reason of the denial of civil rights a gigantic conspiracy is and has been flourishing and each one court, federal and state, decline jurisdiction. Under cover of these practices the conspiracy flourishes and the conspirators multiply. (See the Exhibits.)

C.

STATEMENT OF FACTS.

The same Statement of Facts set out on pp. 12 to 17 of the Brief to the C. C. A. 3rd C.

D.

The United States District Court for the District of New Jersey has the said conspiracy before it ever since the 7th day of February 1927, in eight cases and in addition thereto, in a Bankruptcy proceeding in the matter of the Eldorado, Inc. Bankrupt, a claim for wages against said Bankrupt. (See page 7 of your petitioner's first Petition for Writ of Certiorari. See also pp. 3-4 of the Brief to the C. C. A. 3rd C.) In each and every one of said cases the said federal court declined jurisdiction of the conspiracy and under one excuse and the other dismissed each and every one of

said cases. The claim against the said Bankrupt is an exception. This said claim was dismissed the first time made. The second time made the attorneys appearing for other claimants provided room for your petitioner to corner the attorney of the said Bankrupt and thus saved his claim.

E.

The said conspiracy was brought up to before the Circuit Court of Appeals for the Third Circuit five times in five different cases. (See Cases Numbered 4193, 4194, 6468, 7525, and 8027.) This said Circuit Court of Appeals for the Third Circuit, in all said five cases summarily and in short and brief decisions declined jurisdiction thus denying to your petitioner civil rights thereby forcing upon your petitioner severe and martyric conditions. In the case pending (No. 728 U. S. D. Ct. D. of N. J.) the District Court assumed jurisdiction of the claim on contract and declines jurisdiction of the Counts in Conspiracy which Counts set forth and contain particular acts of the said conspiracy and name as defendants certain person who participated in the same thereof. (See the Exhibits.)

F.

In the course of the hearings had before the District Court (A. above) it was made to appear to your petitioner that the district Judge Thomas Glynn Walker was determined to destroy the suit and jail your petitioner, and in one of said hearings the said District Judge directed the Deputy Marshal who was attending the Court to arrest your petitioner. The said Deputy Marshal demurred to said orders and asked the said Judge: What for? The said

Judge answered: For Acting like that. Then the said Deputy Marshal answered unto said Judge: He cannot be arrested for taking care of his case. In order to take care and save his case your petitioner on the 19th day of August, 1940, filed a Notice of Appeal appealing his case to the said Circuit Court of Appeals for the Third Circuit. (See case numbered 6468.) Oct. 2, 1940, Brief for Appellant filed. Oct. 19, 1940, Brief for Appellees filed. Nov. 1, 1940, Reply Brief for Appellant filed. Nov. 7, 1940, Argued. Coram, Biggs, Maris and Goodrich, J.J. Dec. 14, 1940, Opinion per Curiam filed. May 15, 1941, Mandate issued directing the District Court to proceed according to right and justice and the laws of the United States.

G.

June 11, 1941. Notice of Motion and Affidavit thereto for permission to submit Affidavit and Exhibits in Opposition to Motions to Dismiss filed. June 23, 1941. Hearing on motion for permission to submit said Affidavit and Exhibits named therein. Appearance: Plaintiff in person. In Opposition: H. Collin Minton, Jr., for himself, Utah Fuel Company and for those for whom he filed the Special Appearance. Plaintiff submitted his motion and moved to submit his exhibits. Motion to submit the exhibits granted, and exhibits submitted by the plaintiff and received by the Court. Mrs. Bergen, Court Stenographer, took down the dictations of Judge Thomas Glynn Walker consisting of brief description of each exhibit. Decision Reserved (Walker). (These Motion Papers and Affidavit are photostated with the exhibits and constitute a part of the photostated record. See them there.)

H.

August 15, 1941. Notice of Motion for Leave to file 2nd Supplemental Bill of Complaint filed. August 25, 1941. Hearing on motion for leave to file 2nd supplemental bill of complaint adding parties defendants. Your petitioner appeared for the motion and explained to the Court the loss of his envelope containing his motion papers and moved the court to postpone the hearing of the motion to obtain copy from Clerk's Office. Motion to postpone the hearing denied and motion for leave to file 2nd supplemental Complaint dismissed. (Smith).

I.

November 19, 1941. Memorandum of Findings of Fact and Conclusions of Law, filed. (Walker). November 25, 1941. Order quashing service of Summons on Carol C. Johnson, filed. November 28, 1941. Order striking service of summons as to Nicholas J. Pappas, Helen N. Pappas, Harry Sussman (not served; out of district; in hiding) and William V. Rosenkrans, filed. The said Memorandum of Findings of Fact and Conclusions of Law is set out on pp. 17a to 22a of the Appendix of the Brief. The said Order in favor of Carol C. Johnson is set out on page 24a and notice of its entry on page 23a of the Appendix. The said Order in favor of Nicholas J. Pappas, Helen N. Pappas, Harry Sussman, and William V. Rosenkrans is set out on pages 25a-26a of the Appendix of the Brief. The District Court is bound to determine all the issues in the case. Interstate Circuit et al. v. United States. Per Curiam. Opinion of the Court, 304 U. S. on page 55. Decree in 20 F. Supp. 868. In this case the District Court failed to do so. It left

five Counts unconsidered. See Argument XXVII, page 94; XXV, pages 91-92; XXIV, pages 90-91 of the Brief to the C. C. A. 3rd C. The District Court declined to proceed in accordance with the Articles of the Constitution and Laws of the United States cited above in the Caption, material parts of which are set out on pages 2a-16a, with Notes of Decisions thereon.

J.

That thereafter and on the 23rd day of January, 1942, your petitioner applied to the United States Circuit Court of Appeals for the Third Circuit for a Writ of Mandamus commanding Judge Thomas Glynn Walker and Judge William F. Smith to proceed and assume and exercise, and carry into effect the powers, authorities and jurisdiction of the Court as conferred upon it by the United States Constitution and those Acts of Congress cited on page 3 (a) and (b) of the Complaint; as well as the several laws which are to be found in the several sections of Title 18 U. S. C. A. cited and referred to above; and quoted in the Appendix of this Petition and Supporting Brief hereto annexed; and more particularly the laws found in Sections 43 and 47 (of Title 8). On behalf of brevity see the full text of the prayer on pages 28-29 of the Original typed Petition which has been sent up as an Exhibit.

That the said petition for Writ of Mandamus was brought up to be heard and argued by your petitioner by motion before the United States Circuit Court of Appeals for the Third Circuit, on the (see Docket Entries) and was then submitted to the Court by your petitioner as there was no one appearing in opposition, and the same was taken by the Court under advisement; and on April 30, 1942 the said circuit court entered its Opinion dismissing the

Petition for lack of jurisdiction. The Opinion is set out in full on page 36a of the Appendix of the Brief to C. C. A.

K.

Title 28, U. S. C. A. Sec. 225 (Judicial Code, Section 127) Appellate Jurisdiction. (a) Review of Final Decisions.

The Circuit Courts of Appeal shall have appellate jurisdiction to review by appeal final decisions. First. In the district courts, in all cases save where a direct review of the decision may be had in the Supreme Court under Section 345 of this title. Mar. 3, 1911, c. 517, Sec. 6, 26 Stat. 828; Mar. 3, 1911, c. 231, Sec. 128, 36 Stat. 1133; Jan. 28, 1915, c. 22, Sec. 2, 38 Stat. 803; Feb. 7, 1925, c. 150, 43 Stat. 813; Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 936; May 17, 1932, c. 190, 47 Stat. 158; and Aug. 23, 1935, c. 614, Sec. 223 (c), 49 Stat. 704; Federal Rules of Civil Procedure. Rule 73, following Sec. 723c of this Title.

The Orders setting aside the services of summonses are in the nature of a final judgment and are therefore immediately appealable. Pleading and Practice in New Jersey, Harris, Sec. 272, citing: Sweeny v. Miner, 88 N. J. L. 361, 96 A. 1014. See XXVI pages 92-93 of the Brief to C. C. A. 3rd C.; in Tomlinson v. Armour, 75 N. J. L. 748, it was held that a judgment in favor of either party upon demurrer (motion) to a declaration is a final judgment reviewable in error, citing Hale v. Lawrence, 22 Id. (N. J. L. 2 Zab. 72, 80); in State v. Pennsylvania Steel Co., 123 Md. 212, an order quashing the return to a summons, . . . is a final order from which an appeal can be taken; 3 Corp. Jur. 483 and cases there cited. Rule 52a of the Federal Rules of Civil Procedure.

There should be a fair compliance with rule 52 (a) of the rules of civil procedure, 28 U. S. C. A. following Section

723 c. Ruberts, J. in Mayo v. Lakeland Highlands Canning Co., 309 U. S. 521, 60 S. C. 521. (3) . . . Such findings are obviously necessary to the intelligent and orderly presentation and proper disposition of an appeal.

(4) The record does not warrant a judgment of dismissal. The Complaint raises constitutional questions of due process, equal protection, and violation of the obligation of contract; conclusiveness of the Findings of Fact and Conclusions of Law by the District Court. National Reserve Ins. Co. v. Scuder, 71 F. 2d. 884; Railroad Commission v. Maxcy, 281 U. S. 82, 83, 74 L. Ed. 716; Cherry-Vurrele Co. v. Thatcher, 107 F. 2d. (8) on page 69; Storley v. Armour & Co., 107 F. 2d. 499, citing H. H. Cross Co. v. Simons, 8 Cir., 96 F. 2d. 482, 486; Crowell v. Baker Oil Tools, 9 Cri., 99 F. 2d. 574, 577; Healy C. J. in Occidental Life Ins. Co. v. Thomas, 107 F. 2d. 875; Green Valley Creamery v. U. S., 108 F. 2d. 342, (7) on p. 347; U. S. v. Borg-Waren Corporation, 108 F. 2d. 424, (4) on p. 427; C. C. A. 7th 1939); American Home Fire Assur. Co. v. Hargrove, 109 F. 2d. 86; Nicholas v. Minnesota Mining & Manufacturing Co. (C. C. A. 4th) 109 F. 2d. 162 (1) on p. 163; Gray McFawn & Co. v. Hegarty, Conroy & Co. Inc. et al. (C. C. A. 2d.* 109 F. 2d. 443 (3); Kurn et al. v. Beasley County Judge, C. C. A. 8th C.) 109 F. 2d. 687 (3); Gray v. United States, (C. C. A. 8th C.) 109 F. 2d. 728; Pullman Co. v. Chicago & N. W. R. Co., (C. C. A. 7th) 110 F. 2d. 425, (1) (2); Syracuse Engineering Co. v. Haight, 110 F. 2d. 468, (6); City of Sumter et al. v. Spur Distributing Co., C. C. A. 4th, Mar. 15 1940, 110 F. 2d. 649 (1, 2); Goodacre v. Panagopoulos et als., C. C. A. D. of C., 110 F. 2d. 716, (1), (2); Creel v. Hudspeth, Warden, C. C. A. 10th C. Mar. 21, 1040, 110 F. 2d. 762, (4) on p. 763; Pers v. Hudspeth Warden C. C. A. 10th C. Mar. 21, 1040, 110 F. 2d. 812, (1), (5); Arenstien v. American Soc. of Com-

posers, Authors and Publishers et al., D. C. S. D. of N. Y., 29 Fed. Supp. 388, (10), (11); Central R. Co. of New Jersey v. Central Hanover Bank & Trust Co. et al., 29 F. Supp. 826, (3). Under Civil Procedure Rule relating to findings by Court formal findings of fact and conclusions of law separately stated take place of opinion written by Court on the facts or law in an injury cause or proceeding; Clark Bros. Co. v. Portex Oil Co. C. C. A. 9th, 113 F. 2d. 45 (4) on p. 47; Continental Oil Co. v. Jones, C. C. A. 10th C., 113 Fed. 2d. 557, (6); Atlas Beverage Co. et al. v. Minneapolis Brewing Co., C. C. A. 8th, 113 F. 2d. 672, (6); Bein Co. v. Landy, Collector of Internal Revenue, C. C. A. 8th, 113 F. 2d. 897, (1); Mississippi Valley Timber Co. v. Mengel Co. et al., C. C. A. 5th C., 112 F. 2d. 947; Hays v. Kelly et Ux., C. C. A. 9th C. 112 F. 2d. 897, (1); Sevens v. Edwards et al., C. C. A. 5th C. 112 F. 2d 534, (3); Edwards v. Lain, C. C. A. 7th C. 112 F. 2d. 343, (2); In re Mount Holly Paper Co. v. Davis et ux., C. C. A. 3rd C.; Automobile Ins. Co. of Hartford Conn. v. Springfield Dyeing Co. Inc., C. C. A. 3rd. C. Feb. 1940; Samuel White v. James A. Johnston, No. 697, 313 U. S. 538, 85 L. E. 1507, 61 S. Ct. 834; Ford Motor Co. v. Nat. Labor Relations Board, 205 U. S. 364 Oil Shares Incorporated v. Commercial Trust Co. et al., 304 U. S. 551; Federal Circuit Court of Appeals must follow decisions of other such federal courts. McConald v. U. S. (C. C. A. Minn. 1937) 89 F. 2d. 128, cer. denied. 1937, 57 S. Ct. 925, 301 U. S. 697, 81 L. Ed. 1352, rehearing denied 1937, 58 S. Ct. 4, 302 U. S. 773, 82 L. Ed. 599.

L.

Case No. 8027. That theretofore and on the 8th day of May, 1942, your petitioner filed his notice of Appeal. Petition to extend time to file Appellant's Brief filed May 29,

1942. Order extending time for filing Appellant's Brief to Aug. 1942 filed. July 6, 1942. Brief for Appellant and Appendix filed. Proof of service of Appellant's Brief filed July 30, 1942. August 31, 1942. Certified copy of Exhibits filed. September 22, 1942. Memorandum of Appellees filed. Praecipe for appearance of Grover A. Ciles and Zar E. Hays for Appellees filed. Oct. 6, 1942. Notice of Motion and Motion to Strike the Memorandum of Appellees filed. October 15, 1942 Second Memorandum of Appellees filed. October 20, 1942. Memorandum of Appellant in support of motion to strike memorandum of Appellees filed Proceedings of June 10, 1940, before Judge Walker filed. Certified photostated copies of certain exhibits and papers filed. List of Index of Exhibits filed. October 22, 1942. Argued. Coram. Maris, Jones, and Goodrich, JJ. Order denying two motions of your petitioner to strike two Memorandums therein filed by certain of the appellees filed. The Order is annexed to this Petition and made a part hereof. December 7, 1942. Opinion. Per Curiam, filed. Order Affirming Order appealed from filed. A copy of the said Opinion is annexed to this Petition and made a part hereof..

M. JURISDICTION.

(a) The said Opinion of the Circuit Court of Appeals for the Third Circuit is a final decision and is subject to review by the Supreme Court of the United States upon Certiorari as provided in Section 347 of Tit. 28 U. S. C. A.

(b) This court has jurisdiction to consider and grant this petition pursuant to Chap. 9, Section 347 of Title 28, U. S. C. A.

(c) It is competent for the Supreme Court of the United States, upon the petition of any party thereto whether Government or other litigant, to require by certiorari, either before or after judgment or decree of the Circuit Court of Appeals, that the cause be certified to this Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal. Chapter 9, Sec. 347 (a) of Title 28 U. S. C. A.; (Mar. 3, 1891, c. 717, Sec. 6, 26 Stat. 828; Mar. 3, 1911, c. 231, Sec. 240, 36 Stat. 1157; Feb. 13, 1925, c. 229, Sec. 1, 43 Stat. 938.

(d) This Court may by certiorari direct any case to be certified. Lauow Bew v. United States, 12 S. Ct. 517, 144 U. S. 47, 36 L. Ed. 340; Azter Min. Co. v. Ripley, 14 S. Ct. 236, 151 U. S. 79, 38 L. Ed. 80; Forsyth v. City of Hammond, 17 S. Ct. 665, 166 U. S. 506, 41 L. Ed. 1095; Title Guaranty & Surety Co. v. U. S. to the use of General Electric Co., 32 S. Ct. 168, 222 U. S. 401, 56 L. Ed. 248.

(e) In the case of Interstate Circuit et al. v. United States, 304 U. S. on page 55, 1, by a Per Curiam Opinion, in substance, this Court held that the District Court is bound to determine all the issues in the case. In the instant case the District Court refused to do so.

(f) The Federal Circuit Court of Appeals for the Third Circuit must follow the decisions of other such Federal Courts. McDonald v. United States (C. C. A. Minn. 1937), 89 F. (2nd) 128, certiorari denied, 57 S. Ct. 925, 301 U. S. 697, 81 L. Ed. 1352, rehearing denied, 1937, 58 S. Ct. 4, 302 U. S. 773, 82 L. Ed. 599. In the instant case the Circuit Court of Appeals for the Third Circuit refused to follow even its own decisions.

N. QUESTIONS PRESENTED.

Q. 1st: Whether the provisions of Official Form No. 2 (Allegations of Jurisdiction. Rule 84 Fed. Rules of Civil Procedure) as it is set out on pp. 106-107 were complied with with respect to the allegations of jurisdiction of the Federal District Court for the District of New Jersey.

Q. 2nd: Whether the application made by your petitioner to the court for the issuance and service of summons upon the non-resident defendants as set out on the caption of the Complaint on pages 1-2, is a proper application serving the requirements of the Rules of Civil Procedure.

Q. 3rd: Whether the defendants named in the suit, by their own acts changed the nature of the suit from an action on contract and under the Industrial Act of the State of Utah, to an action in trespass on the case in conspiracy.

Q. 4th: Whether the complaint, pleadings filed thereto, and exhibits submitted raise questions of due process, equal protection, equal benefits of all laws and proceedings, deprivation of the writ of Habeas Corpus, deprivation of Civil Rights, and violation of the obligation of contract.

Q. 5th: Whether the defendants in the suit were properly joined as parties defendant.

Q. 6th: Whether Section 729 of Title 28, U. S. C. A. is specially designated in the Code of Laws of the United States for the protection and vindication of civil rights of citizens and of all other persons within the jurisdiction of the United States; and whether it governs the procedure which was followed in the instant case.

Q. 7th: Whether the defendants named in the complaint, in the prosecution and carrying on of the conspiracy set forth in the Complaint and Exhibits submitted thereto, have committed any offense against the laws of the United States,

thereby bringing or placing themselves within the Provisions of the Articles of the United States Constitution and Laws of the United States which are cited on the Caption of this Petition and quoted in the Appendix of the Brief to the C. C. A. 3rd. C., pages 2a-16a; see citations on the 6th and 7th pages of the Brief to C. C. A. 3rd. C.

Q. 8th: Whether the Complaint, pleadings thereto, and Exhibits submitted in support of the same thereof state a cause of action for treble damages under the Anti Trust laws of the United States. See citations on the unnumbered 5th and 6th page of the Brief to C. C. A. 3rd. C.

Q. 9th: Whether the law found in Section 103 of Title 28, U. S. C. A. is a law specially enacted to deal with, inquire of, try, determine, and punish offenses against the United States which begun in one judicial district and continue in several other districts; and whether, under the state of facts of the instant case, the instant case is one which begun in the District of Utah and continued in several other districts and feverishly and openly prosecuted in the District of New Jersey and the District of Pennsylvania.

Q. 10th: Whether, under the state of facts, the allegations in the Complaint and pleadings thereto, and the evidence set out in your petitioner's Exhibits; the Articles of Incorporation of the principal defendant, Utah Fuel Company, its residence in the District of New Jersey; and the fact that the conspiracy is operated from its headquarters located in Jersey City, N. J., the defendants have placed themselves within and under the provisions of the 6th Amendment of the United States Constitution.

Q. 11th: Whether the 6th Amendment to the United States Constitution requires your petitioner to go from state to state and separately institute suits against those of the defendants residing therein while the said principal defen-

dant, a procuror, would be residing in the District of New Jersey.

Q. 12th: Whether there will be a failure of justice if your petitioner proceeds to trial on the Memorandum Opinion of Judge Thomas Glynn Walker.

Q. 13th: Whether the District Court of the United States in the instant case has abandoned its jurisdiction already properly obtained of the instant suit; and whether the Circuit Court of Appeals 3rd Circuit sanctioned the abandonment of the instant suit, thereby destroying the conspiracy parts of the suit and leaving the conspiracy to flourish.

Q. 14th: Whether the failure of the District Judge to find specially the facts and base his conclusions of law of his ruling on Motion numbered No. 4 on Counts 23rd and 24th constitute a violation of the provisions of Federal Rule 52 (a) of the Federal Rules of Civil Procedure; and whether he deliberately and intentionally formed his ruling to destroy the character and conspiracy parts of the instant suit.

Q. 15th: Whether the suit at hand is governed by the "inhibition" of the Act of the Forty-Ninth Congress. Sess. II, Chap. 137, March 3, 1887, Sec. 1, . . . and no civil suit shall be brought before either of said courts (Circuit and District) against any person by any original process of proceeding in any other district than that whereof he is an inhabitant; . . . ; or it is a suit within the exceptions enacted as Section 5 of said Act and is governed by the law of this Court construed in the case of Tennessee v. Union & Planters Bank, 152 U. S. 511, 36 L. Ed. 511, 14 S. Ct. R. 954 and cases cited therein and cases in point.

Q. 16th: Whether in suits brought under the authority of the Articles of the Constitution and Laws of the United States cited in the Caption of this Petition above; on page 3 of the Complaint; and quoted in the Appendix of the Brief to the C. C. A. 3rd C. as annexed hereto and made a part

hereof, the sum or value of the amount in dispute must exceed, exclusive of interest and costs, the sum or value of $3,000.00, or whether the instant suit is governed by the law laid down by this Court in (27) of the case of Hague vs. The Committee of Industrial Organization, 307 U. S. 495, et seq. 83 L. Ed. 1532; (see the par. on pages 38-41 of the Brief to C. C. A. 3rd. C.) and subdivisions (1) last sentence, (2) Crimes and Offenses; (12) Suits Concerning Civil Rights; (14) suits to redress deprivation of civil rights; (17) suits by aliens for torts; (23) suits against trusts, monopolies and unlawful combinations, of Section 41 of Title 28, U. S. C. A. See the several subdivisions which are set out on pp. 23-26 of the Brief to the C. C. A. 3rd C. which is annexed hereto and made a part hereof. (Ruling on Motion No. 1.)

Q. 17th: Whether, in so far as the instant cause is concerned, the District Court departed from the accepted and usual course of judicial proceedings; and, in so far, the Circuit Court of Appeals for the Third Circuit repeatedly sanctioned such departure by the District Court, thus leaving the conspiracy set forth in the Complaint and Exhibits submitted, to be carried on contrary to the safety of the public and in violation of their public policy and to the wrong and injuries of your petitioner.

Q. 18th: Whether the Circuit Court of Appeals for the Third Circuit, in affirming the Opinion of the District Court, has disregarded the several Constitutional Questions, as well as several questions of Federal law, governed by the Articles of the United States Constitution and sections of the Federal laws cited above in the Caption of this Petition, in the Printed Complaint and the Brief to C. C. A. 3rd C. as annexed hereto, in conflict with applicable decisions of this Court; of the same Circuit Court; of all the other Cir-

cuit Courts of Appeal; and of the District Court of the United States for the District of New Jersey.

Q. 19th: Whether the District Court has disregarded several important questions of general Federal laws in conflict with the weight of authority; and whether the Circuit Court of Appeals for the Third Circuit has had sanctioned such departure thus leaving the conspiracy to be carried on contrary to the interest of the public.

Q. 20th: Whether the principles of "res judicata" may be invoked to sustain fraud and a judgment obtained by fraud, collusion, perjuries, concerted action by the defendants in the instant suit, and the introduction of a copy of an Application for a Writ of Mandamus, made by your petitioner to this Court in October Term, 1919, the filing of which was obstructed up to the October Term, 1925, or thereabout (the records have been destroyed several times; see the records of this Court); and whether the District Court have had severely dealt with the instant suit of your petitioner in order to destroy the character and nature of the suit; and whether the Circuit Court of Appeals for the Third Circuit sanctioned such and such conduct and rulings of the District Court.

Q. 21st: Whether the Notice of Motion, Motion and Affidavit for leave to submit affidavits and exhibits in opposition to the motions to dismiss the instant suit, the appearance of H. Collin Minton, Jr., for himself and as counsel for several defendants, the hearing of the Motion without any objection made in open court on a regular motion day, and the submission of the Exhibits to the Court by your petitioner satisfied the requirements of Federal Rule 6, Time, Federal Rules of Civil Procedure; Federal Rule 43, (e) Evidence on Motions; Federal Rule 44, Proof of Official Records, (a) and (c); and Federal Rule 10, (c) Adoption by Reference, Exhibits; and whether the District Court in

stating: Motion No. 5. The plaintiff moved to submit affidavits and exhibits in opposition to the motion to dismiss. The Court, however, was unable to consider same because the plaintiff did not give notice of said motion as required by the Rules.—has not falsified the facts and the records of the proceedings had in order to severely deal with the conspiracy; and whether the said Circuit Court of Appeals for the Third Circuit has sanctioned such mal-judicial practice. (The Notice of Motion, Motion and Affidavits thereto and Exhibits mentioned therein have been photostated and filed in the Office of the Clerk of the Circuit Court of Appeals Third Circuit showing: (a) Receipts of registered mail; (b) name of the person mailed to; (c) the Notice of Motion; (d) Motion; (e) Affidavit; (f) short digest of the Exhibits; (g) Memorandum of plaintiff to each exhibit submitted.)

Q. 22nd: Whether the defendants in the District Court are presumed to have had due and timely notice of the entry of the Memorandum Opinion of the District Judge; whether they have had a right to appeal therefrom to the Circuit Court of Appeals for the Third Circuit; and were represented by several able counsels; and whether their failure to appeal extinguished their right to file pleas to the jurisdiction of the Circuit Court of Appeals, and pleas to dismiss the appeal. (Memorandums first and second.)

Q. 23rd: Whether your petitioner herein timely served counsels for appellees with the requisite number of copies of his Brief.

Q. 24th: Whether the failure of the appellees to proceed and file and serve copies of their brief in accordance with the provisions of paragraph 5, (a), (b), (c), (d), and (e) of rule 26, and par. 1 of rule 27 of the Rules of Practice and Procedure of the Circuit Court of Appeals, Third Circuit, extinguished their right to file any other pleading against the appeal of your petitioner in the instant appeal.

(No other briefs may be filed without special leave of the court. Last sentence of rule 27 of the Rules of Practice and Procedure of the C. C. A. 3rd. C.)

Q. 25th: Whether the two Memorandums filed and served to dismiss the appeals are irregular, defective, scandalous, prolix, and obscene, and were issued, filed, and served to corruptly obstruct and impede the due administration of justice by the use of the honor and privileges of the State of Utah while they have the true facts and the resident defendants in their hands, filed in the state courts and in the Federal Court for the District of Utah, thereby winning the sympathy of the Circuit Court of Appeals for the Third Circuit.

Q. 26th: And whether the District Court of the United States within and for the District of New Jersey is to be permitted to allow the criminal conspiracy set forth in the Complaint and Exhibits thereto to be carried on therein in said district as well as any other district of the United States, or of any other foreign country, against the safety of the public and their public policy thereof in order to protect the operations of the defendant, Utah Fuel Company and controlling and controlled and associated corporations.

O. REASONS FOR GRANTING THE WRIT:

First: The Circuit Court of Appeals for the Third Circuit in affirming the Order of the District Court simply divested itself of the jurisdiction it possesses.

Second: The Circuit Court of Appeals for the Third Circuit in affirming the Order of the District Court has laid down a rule which is in conflict with the rules established and followed by the same court in all its reported cases:

(a) Vacuum Oil Co. v. Eagle Oil Company, 154 Fed. 867, decree affirmed. Eagle Oil Company of New York v. Vacuum Oil Company, 162 F. 671, 89 C. C. A. 463, certiorari denied, 29 S. Ct. 696, 214 U. S. 515, 53 L. Ed. 1063. On page 875 of 154 Fed. Rep. this Court says:

"But while the action is founded upon fraud, it is also of transitory character, and the fact that some of the fraudulent acts were committed outside the jurisdiction of this court and outside of the United States will not avail the defendants. McKenna v. Fisk, 1 How. 241, 247, 248, 11 11 L. Ed. 117; Mitchel v. Harmony, 13 How. 115, 157, 14 L. Ed. 75; Dennick v. Central R. R. Co., 103 U. S. 11, 18, 26 L. Ed. 43".

(b) United States vs. Silverman, 106 Fed. 2nd. 75. See parts of the Decision written by Judge Clark on pp. 19-20 of the Brief to the C. C. A. 3rd C. To the same effect all the cases cited on pages 20-21 of said brief.

(c) Calahan vs. United States, 53 Fed. 2d. 467. See parts of the decision on page 33 of said brief to C. C. A. 3rd. C.

(d) See also the cases of the same court and from the same District cited in paragraph 5 on page 20 of said brief.

(e) There is no exception to be found in the reported cases of the said C. C. A. 3rd. C. It simply joined issue in singling your petitioner out leaving him to face the infernal conspiracy of the defendants.

Third: The Circuit Court of Appeals for the Third Circuit in affirming the Order of the District Court has laid down a rule which is in conflict with the rules established by the said District Court.

United States vs. Jackobson, et al. 34 Fed. Supp. 215. See par. 7 on page 67 of the brief to C. C. A. 3rd. C. as annexed hereto and a part hereof.

Fourth: The reasons given by the District Court are suppressive tending to suppress the administration of justice as against the defendants in the instant suit thereby destroying your petitioner's causes of action which are set forth in the several counts of the conspiracy parts of the Complaint and leaving the conspiracy to be carried on to its final objective.

Fifth: The reasons announced by the District Court disregard the provisions of the Articles of the United States Constitution and Acts of Congress set forth in the Caption of this Petition, and which Congress specifically said should govern the methods of procedure in arriving at a reasonable adjudication of every case before the bar.

Sixth: These regulations have been consistently followed since the establishment of the courts of the United States, and are UNANIMOUSLY ACCEPTED BY THE PUBLIC.

Continental Illinois Nat. Bank & T. Co. v. Chicago, etc. Co., 55 S. Ct. 23, 293 U. S. 58, 79 L. Ed. 197;

Wilder vs. United States, 27 Sup. Ct. 787, 204 U. S. 674, 51 L. Ed. 674; Mitchel v. Greenough, 59 S. Ct. 788, 306 U. S. 659, 83 L. Ed. 1056.

U. S. vs. Kissel, 31 Sup. Ct. 124, 126, 218 U. S. 606, 54 L. Ed. 1168;

In re Palliser, 136 U. S. 257, 262, 10 Sup. Ct. 1034, 34 L. Ed. 514;

Horner v. U. S., 143 U. S. 207, 12 Sup. Ct. 407, 36 L. Ed. 126;

Burton v. U. S., 202 U. S. 344, 381 et seq., 26 Sup. Ct. 688, 50 L. Ed. 1057; Hyde v. U. S., 225 U. S. 347 et seq.;

Lamar v. U. S., 240 U. S. 60, 36 Sup. Ct. 255, 60 L. Ed. 526;

United States vs. Fullheart quoting from Re Subold, 100 U. S. 871 on p. 895; Hyde vs. Shine, 199 U. S. 62, 25 S. Ct. 760, 5 L. Ed. 90;

Haas v. Henkel, 216 U. S. 462, 30 S. Ct. 249, 54 L. Ed. 569, 17 Ann. Cas. 1112; Grayson v. United States, 272 F. 553; Grigg v. Bolton, 53 F. 2d. 158; U. S. v. Freeman, 239 U. S. 117, 36 S. Ct. 30, 60 L. Ed. 172; U. S. v. Alaska Cons. Canneries, 2 F. 2d. 614; Putnam v. U. S. 162 U. S. 687, 708, 16 S. Ct. 923, 40 L. Ed. 1118;

Benson v. Henkel, 198 U. S. 1, 25 S. Ct. 569, 49 L. Ed. 919;

In Re Palliser, 136 U. S. 257, 10 S. Ct. 1034, 34 L. Ed. 514;

U. S. v. Lombardo, 241 U. S. 73, 77, 36 S. Ct. 508, 510, 60 L. Ed. 897;

(377 U. S. C. A. 28)

Federal Power Co'n v. Metropolitan Edison Co., 58 S. Ct. 963, 304 U. S. 375, 82 L. Ed. 1408;

In re 620 Church Street Bldg. Corp. et al. 57 S. Ct. 88, 299 U. S. 24, 81 L. Ed. 16;

Steelman v. All Continent Corporation, 57 S. Ct. 705, 301 U. S. 278, 81 L. Ed. 1083; Julian v. Central Trust Co., 193 U. S. 93, 112, 24 S. Ct. 399, 48 L. Ed. 629; North Laramie Land Co. v. Hoffman et al., 268 U. S. 276, 283, 45 S. Ct. 491, 494, 69 L. Ed. 953;

(Title 15 Sec's 1, 5, 15, 22, 24, 26)

People's Tobacco Company v. American Tobacco Company, 246 U. S. 79, 87, 38 S. Ct. 233, 62 L. Ed. 587, Ann. Cas. 1918 C. 537;

Gen. Inv. Co. v. Lake Shore Ra'wy, 260 U. S. 261, 279, 43 S. Ct. 106, 67 L. Ed. 244; Minnesota v. Northern Securities Co., 194 U. S. 48, 71, 24 S. Ct. 598, 48 L. Ed. 870; Wilder Manufacturing Co. v. Corn Product Refining Co., 236 U. S. 165, 174, 35 S. Ct. 398, 59 L. Ed. 520;

Paine Lumber Co. v. Neal, 244 U. S. 459, 471, 37 S. Ct. 718, 61 L. Ed. 1256; Geddes vs. Anaconda Mining Co., 254 U. S. 590, 593, 41 Sup. Ct. 206, 95 L. Ed. 425;

The decision is not in accord with the decisions of all other Circuit Courts of Appeals in the cases cited and set out above in this petition, as well as in the following cases:

Frey & Son v. Cudahy Packing Co., 228 Fed. 209;

Thomas v. United States, 156 Fed. 897, 84 C. C. A. 477;

Radin v. U. S., 189 Fed. 568, 111 C. C. A. 6;

Grayson v. U. S., 272 F. on p. 557, (8) U. S. v. Sanch, 7 Fed. 715; Rease v. U. S., C. C. A. 4th C., 99 Fed. 2d. 752, (5); Smith v. U. S., C. C. A. 9th C. 92 F. 2d. 460, (1-2); Fabacher v. U. S., C. C. A. 5th C., 84 F. 2d. 602, (5); U. S. v. Jordan, 22 F. 2d. 102 (2); Dealtry v. Posse School, Inc., C. C. A. 1st C. (1938) 100 F. 2d. 470 (1-2); Aetna Casualty & Surety Co. v. Yeats, C. C. A. 4th C., 99 F. 2d. 665, (6); In re Philadelphia & Reading Coal & Iron Co., 103 F. 2d. 901; Holmes v. Rowe, C. C. A. 9th C. 97 F. 2d. 537, (1-2); Hellawell v. Grafeld, 22 F. 2d. 765, (5); In re Diversey Bldg. Corporation, 86 F. 2d. 456, (1-3); Whittel v. Roche, 88 F. 2d. 366; Bethke v. Grayburg Oil Co., 89 F. 2d. 536; Lanning v. Osborne, 79 F. 657, 662; U. S. v. Van Dusen, C. C. A. 9th C., 78 F. 2d. 125; Shell Oil Co. v. District Court of U. S. N. Dist . . ., C. C. A. 9th, 70 F. 2d. 394; Mitchel v. Greenough, 100 F. 2d. 184; Rease v. U. S., 99 F. 2d. 753, C. C. A. 4th C.; Bridgeman v. U. S. 140 F. 577; U. S. v. Downey, 251 F. 366; Smith v. U. S., C. C. A. 9th C. 92 F. 2d. 460, (1-3); Hansen Packing Co. v. Armour & Co., 16 F. Supp. 784; Jeffrey-Nichols Motor Co. v. Hupp Motor Car Corp., C. C. A. 46 F. 2d. 623; William-

son v. Columbia Gas & Electric Corp., 27 F. Supp. 198, (4-6); Glen Coal Co. v. Dickinson Fuel Co., 72 F. 2d. 885; Murry v. Patrie, Fed. Cas. No. 967; Western Pocahontas Corporation v. Accord, 178 F. 843; John Gund Brewing Co. v. U. S. 204 F. 17, 122 C. C. A. 331; U. S. v. Philadelphia, etc. R. Co., 237 F. 292; U. S. v. John Kelso Co., 86 F. 304, 308.

Title 18, U. S. C. A. Sec. 550.

United States v. Falcone, et al., 311 U. S. 205, 85 L. Ed. 128, 61 S. Ct. 204. Mr. Justice Stone delivered the Opinion of the Court on page 208. It is said that he is, (guilty of conspiracy) either because his knowledge combined with his action makes him a participant in the agreement which is the conspiracy, or what is the same thing he is a principal in the conspiracy as an aider or abettor.

United States vs. Peoni, (C. C. A. 2d. C.) 100 F. 2d. 401;

Lambert v. United States, (C. C. A. 5th C.) 101 F. 2d. 960;

United States vs. Hodorowicz, 105 F. 2d. 218 (8), C. C. A. 7th;

United States vs. Silverman, 106 F. 2d. 150 (C. C. A. 3rd. C.);

United States vs. Bakes, (C. C. A. 7th C.) 107 F. 2d. 579;

Bakun vs. United States, 112 F. 2d. 633 (1), (C. C. A. 4th. C.);

United States vs. Yasser, (C. C. A. 3rd. C. 114 F. 2d. 558 (5);

United Cigar Whelan Corporation et al. vs. United States, 113 F. 2d. 340;

United States vs. Sall, (C. C. A. 3rd. C. 116 F. 2d. 745 (1), (2), (3), (4), (5), (6);

Eley vs. United States, (C. C. A. 6th. C.) 117 F. 2d. 526;

Federal Deposit Ins. Corp. v. Vest, (C. C. A. 6th.) 122 F. 2d. 765;

McNabb et al. v. United States, (C. C. A. 6th. C.) 125 F. 2d. 848;

United States vs. Johnson, 123 Fed. 2d. 111 (35), (36), (38);

Brickey v. United States, 123 F. 2d. 341;

United States vs. Cohn et al., (C. C. A. 2d. C.) 124 F. 2d. 164.

18 U. S. C. A. 231.

United States vs. Harris, 311 U. S. 292, 55 L. Ed. 196, 61 S. Ct. 217;

United States vs. Norris, 300 U. S. 564, 81 L. Ed. 808A, 37 S. Ct. 535;

American Ins. Co. v. Lucas, 38 F. Supp. 926;

Boehm v. United States, 123 F. 3d. 791 (1), (5) et seq. A leading authority;

Travis v. United States;

United States vs. Falone, 112 F. 2d. 894 (C. C. A. 2d. C.);

Behrle v. United States, C. C. A. D. C. 100 F. 2d. 714;

Lucks v. United States, C. C. A. 5th C. 100 F. 2d. 908 (C. C. A. 5th. C.);

United States v. Silverman, 106 F. 2d. 750;

Blackmon vs. United States, (C. C. A. 5th. C.) 108 F. 2d. 572.

Title 18 U. S. C. A. Sec. 232.

United States vs. Van Riper, (C. C. A. 2d. C.) 99 F. 2d. 816;

United States vs. Silverman, 106 F. 2d. 750;

United States vs. Perlstein, (C. C. A. 2d. C.) 126 F. 2d. 789. Certiorari denied May 4, 1942, 62 S. Ct. 1106, 86 L. Ed.;

Outlaw vs. United States, (C. C. A. 5th. C.) 81 F. 2d. 805.

See the above two sections on pages 12a-13a of brief to C. C. A.

Seventh: The decision of the Circuit Court of Appeals for the 3rd Circuit is contrary to the settled judicial practice of many years.

Eighth: Jurisdiction of the Conspiracy parts of the suit was wrongfully and unlawfully declined and refused by the federal District Court for the District of New Jersey in violation of the Articles of the United States Constitution and Acts of Congress cited above in the Caption of this Petition and set out or quoted on pages 2a et seq. of the appendix to the brief to C. C. A. 3rd C.

Title 28 U. S. C. A. Section 729.

"The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of chapter 3 of title 8, and title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law the common law, as modified and changed by the Constitution and statutes, of the state wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and if it is of criminal nature, in

the infliction of punishment on the party found guilty, (R. S. Sec.).

Ninth: The construction and application of section 729 of Title 28 U. S. C. A. is already before this Court in the following cases:

(a) State of Tennessee vs. Union Planters Bank, 152 U. S. on page 513 . . .

Mr. Justice Gray delivered the Opinion of the Court and says:

"The 3rd Article of the Constitution, (459) said Chief Justice Marshal, "enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law.

It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution laws and treaties of the United States" and when a question to which the judicial power of the Union is extended by the Constitution forms an ingredient of the original cause, it is in the power of Congress to give the Circuit Courts (District Courts) jurisdiction of that cause, although other questions of fact or law may be involved in it.

But "the right of the plaintiff to sue cannot depend on the defense which the defendant may choose to set up. His right to sue is anterior to that defense and must depend on the state of things when the action is brought. The questions the case involves then, must determine its character, whether those questions be made in the cause or not", Osborn v. Bank of United States, 22 U. S. 9 Wheat.

738, 819, 824 (6:204, 223, 224.). In the last clause as the context shows the word "then" (although printed between commas) means "at the time". The earliest Act of Congress, which conferred on the Circuit Courts (district courts) of the United States general jurisdiction of suits of a civil nature, at common law or in equity, "arising under the Constitution or laws of the United States, or treaties under their authority," was the Act of March 3, 1875, chap. 137, 18 Stat. at L. 470. Under section one of that Act providing that those courts should have original cognizance of such suits, when the matter in dispute exceeded the sum or value of $500, their jurisdiction was exercised in cases in which the plaintiff's statement of his cause of action showed that he relied on some right under the Constitution or laws of the United States. Feibelman v. Packard, 109 U. S. 421, (27:984); Kansas Pac. R. Co. v. Atkinson T. & S. R. Co., 112 U. S. 414, (28:794); "New Orleans v. Houston, 119 (460) U. S. 265, (30:411) Bachrach vs. Morton, 132 U. S. 337 (33:377); Cooks vs. Avery, 147 U. S. 375 (37:209) . . . . On Page 515.

The same rule applies, more comprehensively, to the acts of 1887, 1888. In section 1, as thereby amended, the words giving original cognizance to the Circuit Court of the United States in this class of cases are the same as in the Act of 1875, except that the jurisdictional amount is fixed at $2000, and it is therefore essential to their jurisdiction that the plaintiff's declaration or bill should show that he asserts a right under the Constitution or laws of the United States. . . . The Acts of 1887 and 1888, indeed contain special provisions as to particular kinds of cases arising under the Constitution or laws of the United States. . . . By section 5, nothing in this Act is to repeal or affect any jurisdiction or right mentioned in sections 641, 642, 643, 722, or title 24 of the Revised Statutes, or the Act of March 1,

1875, chap. 114, all of which relate to suits concerning civil rights, and section 643; . . . or in the Act of March 3, 1875, chap. 137, sec. 8 which relates to Notice to absent defendants in suits to enforce or remove liens. The said section 5 of said Act is to be found in the Appendix of this petition. See it also on p. 1 of Memo. filed in C. C. A. 3rd C.

(b) The revision of the Acts of 1875, 1887, 1888 of the Sixty-First Congress, Sess. III, Ch. 231, 1911, Chap. two. District Courts—Jurisdiction. Sec. 24 provides:

Sec. 27. The District Courts shall have original jurisdiction as follows: First: Of all suits of civil nature at common law or in equity . . . ; or where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of three thousand dollars, . . . Provided, however, That the foregoing provision as to the sum or value of the matter in controversy (proviso. Exceptions.) shall not be construed to apply to any of the cases mentioned in the succeeding paragraph of this section. The paragraphs referred to are the subd. of section 41 of title 28 U. S. C. A. which are quoted on pages 23-26, par's. 8, 9, 10, 11, 12, and 13, of the brief to the C. C. A. 3rd C.

(c) Tennessee vs. Davis, 100 U. S. 257, 25 L. Ed. 648;

(d) Howard v. United States, (C. C. A.) 257 F. 986, 21 C. C. A. 586, 34 L. R. A. 500;

(e) Cagle v. U. S. (C. C. A. Tenn. 1925) 3 Fd. 2d 746;

(f) Myres v. U. S. (C. C. A. Tex. 1919) 256 F. 779;

(g) Lung v. U. S. (Cal. 1913) 218 F. 817, 134 C. C. A. 505;

(h) Bryant v. U. S. (C. C. A. Tex. 1919) 257 F. 378; Motion denied, 40 S. Ct. 117;

(i) McClendon v. U. S. (Mo. 1916) 229 F. 523, 143 C. C. A. 591;

(j) United States vs. Bopp, (D. C. Cal. 1919) 256 F. 779;

(k) Radford v. United States (Mass. 1904) 129 F. 49, 63 C. C. A. 491;

(l) Ex parte United States, 101 F. 2d 870. Material parts of the decision of this case in the Appendix of this Petition.

(m) United States vs. Thompson, 251 U. S. 407, 40 S. C. R. 289. Material parts of the decision are to be found in the appendix of this petition.

See also the statutes and citations of cases cited and set forth on pages 1-2-3 of the Memorandum filed by your petitioner against the Memorandums filed by the appellees.

(n) Turning to the Index of the CODE OF LAWS OF THE UNITED STATES, (from the 1925 Code) we find:

CIVIL RIGHTS.

Action for deprivation of rights form of action, p. 123, Sec. 43

Jurisdiction, p. 867, Sec. 41 (12-14)

Persons liable, p. 123, Sec. 43

Conspiracy, p. 124, Sec. 47 (1), (2), (3)

Criminal Prosecution for denial or abridgment, see Crimes and Offenses

Enforcement proceedings governed by Federal Statutes, p. 935, Sec. 729

Review of proceedings for denial of civil rights, p. 123, Sec. 46; Sec. 225, p. 906; Sec. 345, p. 906; Sec. 347, p. 906.

Tenth: The construction and application of Section 103 of Title 28 U. S. C. A., and Title 18 section 88 are already before this Court and before all the other Courts of the United States. See b. on page 56 of the brief. The two sections are set forth there as section 30, Chap. CLXIX (196), Sess. II, of Thirty-Ninth Congress. See the cases cited above in Reason Sixth herein on page 22.

(b) Statutes, definitions, authorities and citations in the construction and application of section 103 of title 28 U. S. C. A. see paragraph 17 on pages 28-29-30-31-32, subd. (a) to (j) of the brief to the C. C. A. 3rd C.

(c) As to the construction and application of section 88 of title 18 U. S. C. A. see the section in full on pages 7a-8a. See also the Notes thereunder from cases similar in character of the instant case on pp. 8a-12a. of the Appendix to the Brief.

(d) The construction and application of sections 43 and 47 of Title 8 U. S. C. A. is already before this Court in numerous cases including those cited and set forth in (XII) on pages 49-50, all of the foregoing statutes are exception to the inhibition of the Act of March 3, 1887-1888. See (XXII) page 83 of the brief to the C. C. A.

Eleventh: Those of the defendants who are residents of the State of Utah have the records and judicial proceedings and the records of their own acts for which they are sued in their hands and have first hand knowledge of the facts, acts and crimes with which they are charged. Their superior and principal defendant, Utah Fuel Company, is a citizen and resident of the district of New Jersey and has its headquarters in the city of Jersey City, State of New Jersey. They all are in constant communication with their said superior and principal defendant and they supply the headquarters of said principal defendant, its officers and agents, and counsels with all deceptive information leading to the defeat of the ends of justice and the due administration of the law by the courts, state and federal, here in New Jersey. And, instead of appearing in person and show cause or give any and all defenses which, if any they have, they may have, they retained the attorney general

and assistant attorney general, H. Collin Minton, Jr. from Trenton, N. J. and H. Brua Campbell, from Wall Street, New York, and directed them to file and they did file such and such pleadings as would impede, obstruct, and defeat the administration of justice and moved the Circuit Court of Appeals for the Third Circuit to dismiss the appeals and proceedings in the instant suit; knowing the truth of the facts charged against them to be as they are set forth in the Complaint and the Certified Exhibits.

All these practices and operations are carried on with their aiding, abetting, counselings, inducing or inducements and false certifications of infernal certificates by them executed. All these are completed upon their arrival here in New Jersey and accepted by the resident principal co-defendant and by it, its officers and agents and counsels carried into execution herein in the state of New Jersey; and the 6th Amendment to the United States Constitution provides that the defendants for their parts in the acts charged to them in the Complaint shall be tried where the crime shall have been committed.

Now, that the liability of the defendant Utah Fuel Company is settled by the Opinion of the District Court from which no appeal has been taken, section 103 of Title 28 U. S. C. A. governs the suit as to all of the defendants and it provides that they shall be tried here in the State where their acts are completed. The same conditions and operations have been carried on here in New Jersey ever since the year 1925, or thereabout. See the Record of the Exhibits. They should be held accordingly.

ASSIGNMENT OF ERRORS.

1. As to the Errors Assigned to the District Court the same are adopted here. See them on pages 95, 96, 97, and 98 of the Brief to the C. C. A. 3rd, which is also the brief to this petition.

2. The Circuit Court of Appeals for the Third Circuit wrongfully and unlawfully divested itself of the authority and duty to command the final determination of the entire controversy before it and before the district court; and to command the district court to do complete justice by adjusting all the rights involved in the instant suit before the Courts.

3. The Circuit Court of Appeals for the Third Circuit, in all the cases in which this petitioner was a petitioner or appellant, wrongfully and unlawfully divested itself of the authority and duty to command the District Court to proceed according to the right and justice and the laws of the United States, and do complete justice by adjusting all the rights involved therein. An exception to this said statement is the mandate issued to the District Court in the first appeal in the instant suit.

4. The Circuit Court of Appeals for the Third Circuit wrongfully and unlawfully dismissed the petitioner's Proceedings for Writ of Mandamus for the reasons more fully appearing in the said proceedings; and for the reason that the District Court wrongfully and unlawfully denied to this petitioner the equal protection of the laws and equal benefits of all laws and proceedings had before it for so many years while the State Courts are unable to do justice in the case by adjudging the conspiracy complained

of because of the federal jurisdiction being exclusive; thereby consuming the entire earnings of this petitioner for a period of (17) seventeen long years, or thereabout, of hard earned moneys; and thereby forcing unnecessary sufferings on this petitioner and jeopardizing his life.

5. The District Court wrongfully and unlawfully issued its Ruling on motion No. 1; and wrongfully and unlawfully struck out counts 21st and 22nd, for the reason that this petitioner in the Paterson, N. J. District Court was represented by competent counsels and the Oral Opinion of the District Judge, delivered in open court at the close of the argument of David Cohn of counsel for the petitioner, was to the effect that: This petitioner is a person unfit to be believed because of the proceedings had against him in the various parts of the United States; and that the United States of America conducted the prosecutions. There were not a single dollar recovered from the swindlers.

6. The District Court of the United States for the District of New Jersey wrongfully and unlawfully granted the motion of the defendants, Utah Fuel Company and H. Collin Minton, Jr., to strike the 23rd and 24th Counts of the Complaint; and wrongfully and unlawfully struck the same.

7. The Circuit Court of Appeals for the Third Circuit wrongfully and unlawfully permitted the defendant-appellees and their counsels to, after the expiration of their time to take an appeal; and after the expiration of their time to file their briefs in the instant case, file obscene and objectionable Memorandums to dismiss the appeals.

8. The Circuit Court of Appeals for the Third Circuit wrongfully and unlawfully denied the plaintiff-appellant's

two motions and Memorandum thereto to strike the said two Memorandums of the respondent-appellees and their attorneys; thereby renouncing its duty to command the determination of the entire controversy before it.

9. The Circuit Court of Appeals wrongfully and unlawfully affirmed the reasons given by the district court in striking out the Counts specified in para's. 5 and 6 above here in this assignment of errors.

The petitioner deems the following parts of the record to be necessary for the consideration of the Questions Presented and Errors Assigned, namely:

a. The requisite number of copies of the Complaint and index and exhibits annexed thereto in the same printed form as it was originally served upon the defendants and filed with the district court.

b. Motion No. 1 and Opposing Affidavit thereto just as the two pleadings were printed, filed and served in the first appeal. The respondents have copies of these pleadings served upon them and if they have none they may apply to this petitioner for copy or copies.

c. Motion No. 2 and Special Appearance thereto and petitioner's Opposing Affidavit thereto as filed and served as printed in the first appeal.

Motion No. 3 and petitioner's Opposing Affidavit thereto as filed and served. The respondent, Carol C. Johnson, No. 68 William Street, New York City, in the proceedings for writ of mandamus and the appeal in the instant case refused to accept copies send by Railway Express and mailed through the United States Post Office. For the said reasons no attempt will be made to serve him at this time. The Court may serve him with Notice of the filing

of the petition, exhibits and brief, and may advise this petitioner of the further steps to be by him taken.

e. The Notice of Motion and Motion for leave to file Second Supplemental Complaint and Supplemental Complaint annexed or attached thereto; and the Notice of Motion, Motion and Affidavit thereto for leave to submit the exhibits mentioned therein, have been photostated and are to be found in the photostated Record and some of the exhibits are attached to these said pleadings just as they were filed with the Circuit Court of Appeals for the Third Circuit. The petitioner will print any part or additional part or all of this said pleadings if this court has the pleasure to direct.

f. The photostated exhibits just as filed with the C. C. A. 3rd C, an index of which is attached to this petition.

g. The first and second Memorandums of the appellees as filed with the court and served upon this petitioner. These Memos. will be printed.

h. The petitioner's first and second motion and memorandum thereto to strike the said two Memorandums filed with the Court by the Appellees. These pleadings also will be printed.

While this cause may not be considered of great importance from the standpoint of the amount involved which is: (a) $6341.11 and three fold that amount on the first Count; (b) $951.65 and three fold that amount on the 21st and 22nd Counts; and (c) $100,000.00 and three fold that amount from all of the defendants on all the counts of the Complaint, the principles involved are of the gravest importance, because the, as the Record and Ex-

hibits show, contentions of your petitioner are that he has been deprived of rights guaranteed to him by the Articles of the United States Constitution and laws of the United States which are cited above in the Caption of this Petition.

Your petitioner presents herewith, as parts of his petition,

1. The Order of the Circuit Court of Appeals 3rd Circuit denying the appellant's two motions to strike the two Memorandums filed by the appellees.

2. The Opinion of the said circuit court of appeals 3rd circuit affirming the Order of the District Court.

3. The Index of the photostated parts of the Record and Exhibits.

4. The supplemental Index of the Exhibits which were excluded in the first photostating by either the photostater or some deputy clerk who had charge of the record.

5. Material parts of the decision of the cases of Ex Parte United States, 191 F. 2d 870; and United States vs. Wood, 299 U. S. 123, 57 Sup. Ct. 177, 81 L. Ed.; See also Patton vs. United States.

6. Supplemental Brief; And

7. Brief as filed in the C. C. A. 3rd Circuit. Arrangements have been made with the printers whereby they saved the type or composition of the type agreeing to reprint the brief and motions at less than ½ of the amount paid for the printing of the brief. The Court is prayed to infer in the circumstances. The petitioner will print

any other part of the proceedings or of the Record which part or parts this Court may have the pleasure to suggest.

Wherefore, your petitioner respectfully prays that a writ of Certiorari may be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding the said Court to certify and send to this court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein entitled:

NICHOLAS J. CURTIS, Petitioner, vs. HONORABLE THOMAS GLYNN WALKER and HONORABLE WILLIAM F. SMITH, United States District Judges for the District of New Jersey, Respondents, and NICHOLAS J. CURTIS, Plaintiff-Appellant, vs. UTAH FUEL COMPANY, et als., Defendant-Appellees.	Case No. 7929. Petition for Writ of Mandamus. Case No. 8027. Appeal from the United States District Court District of New Jersey.

to the end that the said cases may be reviewed and determined by this court, or that your petitioner have such other and further relief or remedy in the premises as to this Court may seem appropriate and in conformity with the Articles of the United States Constitution and

Acts of Congress cited on the Caption of this Petition, and that the said judgment of the said Circuit Court of Appeals for the Third Circuit in the said case, and every part thereof, may be reversed by this Honorable Court.

Nicholas J. Curtis, LL. B.,
Petitioner Appearing in Person,
Post Office Box 972, Trenton, New Jersey.

VERIFICATION AND CERTIFICATE.

STATE OF NEW JERSEY,
COUNTY OF MERCER,
City of Trenton. } SS.

Nicholas J. Curtis, for himself, upon oath say: That he is a Bachelor of Laws. That he is the petitioner in the foregoing petition; the appellant in the Circuit Court of Appeals for the Third Circuit; and plaintiff in the Complaint in the District Court of the United States for the District of New Jersey; that he has prepared, drafted and typed the said petition and has personal knowledge of the matters and things therein set forth, and believe the same to be true.

Affiant further states that the said petition for writ of certiorari is prepared and filed in the utmost good faith, believing that the same is meritorious, and that said petition is not prepared and presented in order to be vexatious or to delay the final opinion and judgment in the case.

Nicholas J. Curtis,
Affiant and Petitioner,
Post Office Box 972, Trenton, New Jersey.

Subscribed and sworn to before me this 8th DAY OF FEBRUARY, A. D., 1943.

S. R. BLOCK
Notary Public, Mercer County,
State of New Jersey.

IN THE
SUPREME COURT OF THE UNITED STATES.

NICHOLAS J. CURTIS,
Petitioner

vs.

UTAH FUEL COMPANY, et als.,
Respondents.

SS. NOTICE.

TO THE ABOVE NAMED RESPONDENTS AND THEIR ATTORNEYS OF RECORD:

Please take notice that a petition for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is this day sent up to the Clerk of the United States Supreme Court, Washington, D. C. to be submitted to him to be filed on the ..... or as soon thereafter as counsel can be heard.

Dated at the city of Trenton, Mercer County, State of New Jersey this 4th day of January, A. D., 1933.

A printed copy of the Petition, Exhibits attached thereto and made parts thereof, Supplemental Brief, and the Original Brief as filed with the Circuit Court of Appeals is served upon you herewith.

Nicholas J. Curtis,
Petitioner.

United States v. Thompson, 251 U. S. 407. (28 U. S. C. A. 729)

Mr. Chief Justice White delivered the Opinion of the Court.

(4) It remains only to consider the contention that, irrespective of the want of persuasive power of the Pennsylvania cases, as the case in hand concerns the prosecution for a crime committed in Pennsylvania, even though it be a crime against the United States, the state rule, in virtue of the provisions of section 722 of the R. S. of the United States (Comp. St. Sec. 1542), was authoritatively controlling on the court below and is so controlling here. (R. S. 722.)

Ex Parte United States, 101 F. 2d 870.

(13) Varying conditions in the new world soon justified changes in the common law as known during the time of Lord Coke. Criminal practice and procedure did not remain static. . . . The situation did not prevent the federal trial courts from adopting the same procedure for use in criminal cases. United States vs. Plumer, 27 Fed. Cas.

551, 572, No. 16, 055; United States v. Harding, 26 Fed. Cas. 131, 136, 137, No. 15, 301. Courts look to the spirit of modern legislation, and to the trend of decisions, both federal and state, to determine what is the true and enlightened rule. Funk v. United States, 290 U. S. 371, 54 S. C. 212, 78 L. Ed. 369, 93 A. L. R. 1136; United States v. Wood, 299 U. S. 123, 57 S. Ct. 177, 81 L. Ed. 78; Patton v. United States, 281 U. S. 276, 50 S. Ct. 253, 47 L. Ed. 845, 7 A. L. R. 263.

(14-15) Although it is our belief that the mere fact that the procedure here in question was known and exercisable by trial courts at common law prior to the American Revolution (although used only in civil cases) sanctions exercise by the respondent if the Constitutional guaranty is not offended thereby it is not necessary to rest our conclusion thereon. Respondent was authorized to observe the common law procedure in criminal cases, as modified by the state practice as of the date that the state was admitted into the Union (Holmes v. U. S., 5 cr., 269 Fed. 96; Logan v. U. S., 144 U. S. 263, 12 S. Ct. 617, 36 L. Ed. 492. Hughes Federal Practice (1931), Sec. 3730.) . . .

Sec. 722, of the Revised Statutes of the United States, which today primarily governs the criminal procedure of federal trial courts provide that the trial courts can follow the Wisconsin State Practice, so long as that practice is not offensive to the constitutional guaranty of trial by jury. Title 28, Sec. 729, U. S. C. A. 28 U. S. C. A. Sec. 729. . . . That the procedure in question does not violate the Sixth Amendment to the Constitution already has been shown.

(19-20) . . . . In the absence of prohibitive legislation courts have inherent power to provide themselves with appropriate procedures required for the performance of their task. Ex Parte Peterson, 253 U. S. 300, 312, 40 S.

Ct. 543, 64 L. Ed. 919; Funk v. U. S., 290 U. S. 371, 381, 384; 54 S. Ct. 212, 78 L. Ed. 369; 93 A. L. R. 1136.

FORTY-NINTH CONGRESS. SESS. II, Chap. 137, March 3, 1887. Sec. 1 . . .; and no civil suit shall be brought before either of said courts (Circuit and district) against any person by any original process of proceeding in any other district than that whereof he is an inhabitant; . . .

Sec. 5. That nothing in this Act shall be held, deemed, or construed to repeal or affect any jurisdiction or right mentioned either in Sections six hundred and forty-one, or six hundred and forty-two, or in six hundred and forty-three, or in seven hundred and twenty-two, or in title Twenty-four of the Revised Statutes of the United States, or mentioned in section eight of the Act of Congress of which this Act is an amendment, or in the Act of Congress approved March first, eighteen hundred and seventy-five, entitled "An Act to protect all citizens in their civil or legal rights."

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 8027. October Term, 1942.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
v.
UTAH FUEL COMPANY, et al.,

Before MARIS, JONES and GOODRICH, Circuit Judges.

ORDER.

AND NOW, October 22, 1942, after argument and full consideration the motions of the appellant to strike the memoranda filed by certain of the appellees herein be and the same hereby are denied.

BY THE COURT:

Maris,

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE THIRD CIRCUIT.

No. 8027. October Term, 1942

NICHOLAS J. CURTIS,
Plaintiff-Appellant,
v.
UTAH FUEL COMPANY, et al.,
Defendants-Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF NEW JERSEY.

OPINION.

(Filed December 7, 1942.)

Before MARIS, JONES and GOODRICH, Circuit Judges.

PER CURIAM:

For the reasons sufficiently set forth in the memorandum opinion of Judge Walker filed November 19, 1941, the orders of the district court from which the plaintiff has appealed are affirmed.

A true Copy:

Teste:

Clerk of the United States Circuit Court of Appeals for the Third Circuit.

DOCUMENT INDEX OF THE PHOTOSTATED EXHIBITS AND TWO MOTIONS, AND OF THE TYPED EXHIBITS EMBODIED THEREIN.

UNITED STATES CIRCUIT COURT OF APPEALS

THIRD CIRCUIT.

CASE No. 8027.

NICHOLAS J. CURTIS,
Plaintiff-Appellant,

vs.

UTAH FUEL COMPANY, et als.,
Defendant-Appellees.

Nicholas J. Curtis, LL. B.,
Plaintiff-Appellant Appearing in Person, Post Office Box 972, Room at No. 7 N. Stockton Street, Trenton, New

Document Index of Photostated Parts of Record and Exhibits Attached Thereto

1st. Docket Entries. 3 no. pages.

2nd. Notice of Appeal to Circuit Court of Appeals. 1 page.

3rd. Plaintiff's Memorandum relative to the matter of Curtis vs. Peraino. 1 page.

4th. List of Documents in the case of Curtis v. Peraino. 1 page.

5th. The Record (typewritten) of the case of Curtis v. Peraino. 30 pages.

6th. The Photostated receipts from the U. S. Post Office showing service of Notice of Motion to Submit. 1 page.

7th. Photostated back page of the receipts showing to whom the registered mail was sent. 1 page.

8th. Notice of Motion to Submit the Exhibits and Memorandum thereto. 4 pages.

9th. Additional Affidavit of the plaintiff introducing in evidence copies of cases pleaded in the Complaint. 18 pages.

10th. Receipt of Registered mail and its back two pages.

11th. Second Supplemental Bill of Complaint. 8 pages.

12th. List of Exhibit A of June, 1941. 2 pages.

13th. Application to Receive Nicholas J. Curtis. Dan Curtis and Christ Zavis, Applicants. 2 pages.

14th. Plaintiff's Affidavit for Leave to Take Papers. 1 page.

15th. State of Utah v. Nicholas J. Curtis. Affidavit Challenging the Judges of the Third Judicial District Court within and for Salt Lake County, Utah, for bias etc. 4 pages.

16th. Part of the Record of the case of Curtis vs. Utah Fuel Company, et als. No. 5547, U. S. Dist. Ct. Dist. of Ut. 5 pages.

17th. Plaintiff's Petition to the President of the United

States as it was taken from him or out of his pocket by the Police when he was turned over to them. 12 pages.

18th. United States District Court for the District of Columbia. Petition for Writ De Lunatico Inquirenio. Defendants, Louis Brownlow and Chas. W. Kutz, Petitioners. In Equity No. 8161. 2 pages.

19th. Order to Show Cause. 1 page.

20th. Summons to Plaintiff.

21st. Letter from the defendant, Dr. Frederick Dunn, to Judge G. A. Iverson. Dear Judge. Letter written at Provo, Utah, and mailed to said Judge through the mails at City and County Bldg., Salt Lake City, Utah . . . I feel that it would be all right to discharge the above named man in care of his brother, who seems anxious to look after him. . . . I believe that to give the man a fair trial outside would be proper. He seems to be quiet and in as nearly normal shape as he will ever be . . . Of course, he may have to be returned here later . . . one page.

22nd. State of Utah vs. Nicholas J. Curtis. Motion to quash, etc. 5 pages.

23rd. Curtis letter to Herman Harms. 2 pages.

24th. State of Utah v. Curtis. Curtis' Affidavit as to the perjury of the defendant William H. Folland who is in default.

25th. State of Utah vs. Curtis. Subpoena. "The State of Utah Sends Greetings to: William J. Fay, Melvin Hazen, W. H. Folland, Judge Fredrickson of Utah Fuel Company.

26th. Certificate of Service of Subpoena. 1 page.

27th. Curtis vs. Utah Fuel Co. et als. No. 5547. Summons. 2 pages.

28th. Warrant of Arrest Nicholas J. Curtis. W. H. Bramel, Judge. June 22, 1920. Judge Bramel had the civil

suit against the Utah Fuel Company under his control when he issued said Warrant.

29th. Warrant of Arrest Nicholas J. Curtis. December 12, 1923. Wm. M. McCrea, Judge. 1 page.

30th. Sheriff's Certificate. 1 page.

31st. Affidavit of the defendant William H. Folland against Nicholas J. Curtis.

> W. H. Folland, being duly sworn upon his oath says: I am acquainted with the condition of Nicholas J. Curtis; I verily believe him to be insane and a fit subject for care and treatment in the State Hospital; . . . See the Affidavit. A lawyer and in default.

32nd. Defendants' Dr. A. C. Callister and D. E. Smith Certificate and Wm. M. McCrea, Judge. 4 pages.

33rd. Sheriff's Certificate of Commitment. 1 page.

34th. Affidavit of the defendant William J. Fay at Salt Lake City, Utah.

35th. The defendants' Doctors Certificate. 4 pages.

36th. Sheriff's Certificate of Commitment. 1 page.

37th. Curtis' Memorandum offering in evidence the Affidavit of Dan Curtis. 1 page.

38th. Clerk's Certificate as to the Record of the Case in the District Court of Salt Lake County, Utah.

39th. UNITED STATES DISTRICT COURT WITHIN AND FOR THE DISTRICT OF UTAH. In Re: Nicholas J. Curtis. Application for Writ of Habeas Corpus. No. 6548, Law; No. 6075, Law. Dan Curtis' Application, Affidavit, in Support of the Application. 6 pages.

40th. Christ Zavis' Affidavit in Support of the Application. No. 6548 Law. 3 pages.

41st. Dan Curtis' Complaint in the District Court of Salt Lake County, Utah. 3 pages. This is the Complaint which Judge Bramel had under his control when he issued the

Warrant of Arrest against the plaintiff above named. See par. 28th above.

42nd. Summons against the Utah Fuel Company.

43rd. Sheriff's Return of Service of Summons upon the Utah Fuel Company. 1 page.

44th. Demurrer to Complaint. Ferdiand Erickson who staged the first mob at Salt Lake City, Utah, Chief Counsel, Dickson, Ellis, and Lucas Attorneys for Utah Fuel Company. 1 page.

45th. Notice of Dismissal filed by Dan Curtis because of the complaint being false.

46th. Mark's and Jensensons' Claim of lien against the claim in the suit. 1 page.

47th. Praecipe for Dismissal filed by Willey & Willey attorneys for plaintiff. 1 page.

48th. Clerk's Certificate Dist. Ct. of Salt Lake County, Utah. 1 page.

49th. Curtis' Memorandum re. Curtis vs. Minas Candaras—Minerva Restaurant. Abraham L. Rosenberg, Lawyer. District Court of Bergen County, Hackensack, N. J.

50th. Letter from Abraham L. Rosenberg to Nicholas J. Curtis. 1 page.

51st. Another letter from Abraham L. Rosenberg.

52nd. Curtis vs. Minerva Restaurant—Minas Candaras, (Mr. Miners) before Hon. Jerome J. Dunn, Supreme Court Commissioner, at Ridgewood, New Jersey. 3 pages.

53rd. Curtis vs. Minerva Restaurant. Dist. Ct. of Bergen County, Hackensack, N. J. 2½ pages and the Order of Judge White. 3 pages.

54th. Memorandum of Nicholas J. Curtis re Curtis vs. Zervos. Poughkeepsie Police Court, Poughkeepsie, New York. 3 pages.

55th. Curtis' Complaint for wages against Mathew Zervos. 3 pages; and Curtis' Request to Find. 1 page.

56th. Index of the case heard in the Police Court at Poughkeepsie, New York. 1 page.

57th. Direct Examination by the Court. 12 pages.

58th. Bus Receipt. The hold up by the Bus Driver.

59th. Curtis' Application to the Labor Department. 1 page.

60th. Letter from the Department of Labor. 1 page.

61st. Another letter from the Department of Labor and followed by 3rd letter from the same woman.

62nd. Curtis' Memorandum offering in evidence certified copies of Motions verified by the defendant William H. Folland, part of a page.

63rd. United States District Court District of Utah. Curtis vs. Utah Fuel Company, et als. No. 6076, Equity.

64th. Motion to Strike the Amended Complaint herein and to quash service of Subpoena. Motion signed by William H. Folland, one of the defendants in the present suit, and Shirely P. Jones, Attorneys and Solicitors. 2 pages.

65th. Motion to Quash the Service of Subpoena in Equity. Filed by William H. Folland. Motion signed by Horace H. Smith, attorney for William H. Folland, and Certificate of Counsel. 2 pages.

66th. The James Damis Case. Parts of. In Chancery of New Jersey. Curtis Memorandum. 1 page. Petition is signed by Thomas S. Doughty, Solicitor of Petitioner.

67th. Affidavit of James Damis. 3 pages, and Order thereon 2 pp. E. R. Walker, C. 2 pages. Clerk's Certificate. 1 page.

68th. Evidence given by James Damis. 6 pages.

69th. Letter from Holy Cross Hospital, Salt Lake City, Utah.

70th. Weber's Order to remove Curtis from his room. 1 page.

71st. Order to show cause why not be removed. 1 page.

72nd. The Paterson Savings Institute against Marcus et als.

73rd. Subpoena to Marcus.

74th. Parts of the case of Curtis vs. the Owl Restaurant. 13 pages.

75th. Clerk's Certificate, U. S. Dist. Ct. Dist. of N. J.

76th. Photostated Copy of the Certificate of the defendant Dr. Frederick Taylor. See page 29th of the Complaint. Dr. Taylor was forced to issue this certificate by C. W. Simons, United States Railroad Administrator at Salt Lake City, Utah. He typed on the typewriter of Mr. Simons and signed the name of the defendant Dr. Frederick Dunn. Dr. Taylor is in default. This Exhibit was left out. Plaintiff applied to the Clerk and had it photostated the same is to be filed here in this Court Oct. 19, 1942. The Photostat is from the Original which was given to the plaintiff by the defendant Dr. Frederick Taylor.

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Plaintiff.

UNITED STATES DISTRICT COURT.
DISTRICT OF NEW JERSEY.

NICHOLAS J. CURTIS,
Plaintiff,
vs.
UTAH FUEL COMPANY, a corporation, et als.,
Defendants.

Document Index of Photostated Parts of Record and Exhibits Attached Thereto

CIVIL 728

CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA } SS:
DISTRICT OF NEW JERSEY }

I, Benjamin F. Havens, Clerk of the United States District Court, District of New Jersey, do hereby certify that the following are true copies of exhibits and papers in the above stated cause:

1. Curtis v. Utah Fuel Company, et als. N. 676-Equity U. S. D. Ct. Dist. of Utah, Plaintiff's Affidavit filing the Depositions of Arthur Capener and Mrs. Paul F. Barton, 1 page.
2. The Deposition of Arthur R. Capener, Mayor of the City of Garland Box, Elder County, Utah, 3 pages.
3. The Deposition of Mrs. Paul F. Barton, 4 pages.
4. Clerk's Certificate, W. B. Wilson, Clerk, U. S. Dist. Ct. Dist. of Ut. 1 page and cover page thereto.
5. Memorandum of the Plaintiff, 1 page.
6. Curtis v. Utah Fuel Co. et als. U. S. D. Ct. Dist. of Utah, No. 6076 Equity Motion to strike the Amended Complaint, etc. signed by W. H. Folland and Shirley P. Jones, 2 pages; and Motion to quash the service of Summons in Equity No. 6076, 2 pages; Clerk's certificate, 1 page and cover page.
7. Exhibit E, Affidavit of Utah Thompson, 1 page.
8. Sheriff's Office Receipts, 1 page.

9. Letter of those Greeks who were charged with murder with Gust Zambelis, 1 page.

10. Notice of sale of the plaintiff's automobile at Auction by Fay B. Syphus, 1 page. B. W.

11. B. W. Dalton's Demurrer and Affidavit thereto, 1 page.

12. The Summons to Fay B. Syphus, 1 page.

13. Sheriff's return, A. E. Gibson, Chief Clerk of Utah Fuel Co.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the seal of the said court, at Trenton, in said District, this 20th day of October, Nineteen hundred and forty-two.

Benjamin F. Havens,
Clerk, District Court U. S.
Kathryn M. Flynn,
Deputy Clerk.

EXCEPTION TO RULING ON MOTION NO. 1 AS SET FORTH IN PAR. 6.

The ruling is repugnant to and violates the provisions of Section 1980 of the U. S. R. S., Section 47, (1), (2), (3) of Tit. 8, U. S. C. A.; Section 711; Act of Mar. 3, 1911, c. 231, Section 256, 36 Stat. 1160; Oct. 6, 1917, c. 97, Section 2, 40 Stat. 395; June 10, 1922, c. 216, Section 2, 42 Stat. 635; Section 371, Tit. 28, U. S. C. A. (Judicial Code, section 256, amended) Exclusive Jurisdiction of United States Courts; (First);

The last clause of said par. is repugnant to and violates the provisions of Section 550, (Criminal Code, Section 332.)

of Tit. 18; Sections 5323, 5427 of the U. S. R. S.; Act of Mar. 4, 1909, c. 321, Section 332, 35 Stat. 1152. It also violates the following rule, to-wit:

One who learns of a conspiracy after it is formed, and then joins it, or knowingly, aids in the execution of its scheme and shares in its profits, becomes from that time as much a co-conspirator as if he were one of those who originally designed it and put it in operation. Sanborn, Van Devanter, Hook, and Adams, 4 Judges Circuit Court Re: United States v. Standard Oil Co., 152 Fed. Rep. 290. Citing: Lincoln v. Claffin, 7 Wall. 132, 138, 19 L. Ed. 106; United States v. Babcock, Fed. Cas. No. 14,487; United States v. Cassidy (D. C.) 67 Fed. 698, 702; The Anarchists' case, 13 N. E. 865, 976, 17 N. E. 898, 122 Ill. 1, 3 Am. St. Rep. 320; United States v. Johnson (C. C.) 26 Fed. 682, 684; Malpractice. (38 C. J.) p. 520 . . . In Re Rosenkrans, 84 N. J. Eq. 232, 241, 94 A. 42, No. 39, 653. Court of Chancery of New Jersey. April 30, 1915. In the matter of Addison P. Rosenkrans, a solicitor of the court of chancery of New Jersey. On order to show cause why respondent should not be disbarred or otherwise disciplined and punished, Respondent suspended. Walker, Ch. Such are their practices in the cases against this plaintiff, and more so in the suit now pending to which the exceptions are filed.

The ruling as set forth in par. 5 thereof is repugnant to and violates the provisions of section 47, of Tit. 8, supra; the provisions of Section 88 of Title 18, U. S. C. A. See Notes and citations thereunder; Laws of New Jersey 1709-1881, 1755-1868. Sec. 307, p. 327. "Any judgment devised and contrived of malice, fraud, covin, confusion or guile is clearly and utterly void."

EXCEPTION TO RULING ON MOTION NO. 2.

The inhibition of section 1 of the judiciary acts of March 3, 1887, c. 373, 24 Stat. 552, and Aug. 13, 1888, c. 866, Sec. 1, 25 Stat. 433 (U. S. Comp. St. 1901, p. 508), that "no civil suit shall be brought before either of said courts (the Circuit Court and District Court) against any person by any original process or proceeding in any other district than that whereof he is an inhabitant" does not restrict the jurisdiction of the Court, nor its power to bring in parties without its district, in the case under consideration, because that provision is inapplicable to instances in which exclusive jurisdiction over particular cases, or classes of cases, is created and conferred upon the courts of the United States by special acts of Congress. Sanborn, Van Devanter, Hook and Adams, Circuit Court Judges in re United States v. Standard Oil Company, supra. Citing: U. S. v. Mooney, 116 U. S. 106, 6 Sup. Ct. 304, 29 L. Ed. 550; several other cases. See the Decision in the Reports. See the Several Acts of Congress cited on page 3 of the Complaint.

EXCEPTION TO RULING ON THE SECOND COUNT. See reasons and laws and citation given on the Ruling on Motion No. 1.

Exception to Rulings on Counts 21 and 22. See reasons, laws and citation set forth in the exception to motion No. 1.

EXCEPTION TO THE RULINGS ON MOTION NO. 5.

This said ruling is repugnant to and violates the true facts of the record and tends to change or alter; and does change

and alter the nature of the suit. Due and legal notice were given and served by Registered Mail the Receipts of which are fastened to the Original on file in this Court. The Postmaster who received them was asked by this plaintiff to write the name of each attorney to whom the letter was addressed and he was directed by the Senior at Desk to "help the old man" . . . Due and timely appearance entered by H. Collin Minton, Jr., and the call of the motion was answered by him theretofore. The plaintiff moved thus: I submit the Motion and move to submit the Exhibits. The Court. What? The Plaintiff: I submit the Motion and move to submit the Exhibits. The Court: Any opposition? H. Collin Minton, Jr. Yes, according to his Memorandum the Exhibits have nothing to do with Utah Fuel Company. The Court. All right, I will see if they have or have not.

The Court. Mr. Curtis, will you wait a few minutes to take care of these other matters and then I will receive your Exhibits. Mr. Curtis. Certainly. The Court. Certainly I will. Theretofore the plaintiff waited until 2 o'clock P. M. when his honor returned and received the Exhibits regularly without any opposition or appearance on the other sides.

Federal Rule 5 (b). Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney. . . .

Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address . . . Service by mail is complete upon mailing. Sec. 5.05. Service must be made upon attorney. M. Fed. Pr. p. 388.

Sec. 6.01 (Fed. Rule 6) Schedule of Time. On p. 390.

(4). Time for Noticing Written Motions Other Than Those Which may be Heard Ex Parte.

In all cases unless a different period is fixed by the rules or by order of the court . . . Not later than 5 days before the time specified for hearing. Rule 6 (a). Additional Time after service by mail . . . 3 days shall be added to prescribed period. Rule 6 (e). M. Fed. Pr., p. 386.

Nicholas J. Curtis, LL. B.,
Plaintiff, No. 106 Mansion Street,
Poughkeepsie, N. Y.